

New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
Onondaga Lake Unit  
50 Wolf Road  
Room 410A  
Albany, New York 12233-5550

Telephone: (518) 457-7821  
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John P. Cahill  
Commissioner

September 15, 1998

John Ferrante  
Atlantic States Legal Foundation  
658 East Onondaga Street  
Syracuse, NY 13204

RE: Town of Salina Consent Order

Dear John:

Pursuant to your request, made at the September 1, 1998 meeting between Departmental and Atlantic States Legal Foundation staff, please find enclosed a copy of the Town of Salina Landfill Consent Order. This Order is an RI/FS/RD/RA Order. Preliminary RI field Work was completed this summer and the Town is compiling the RI Report. As Sue Benjamin has already sent you the other documentation requested at that meeting, this should complete all the information requested by you.

As always, if you have any questions please feel free to contact me at the above number.  
Thank you.

Sincerely yours,

Scott Crisafulli, Esq.  
Senior Attorney

cc: w/out Enc.  
S. Benjamin, DER

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the  
Development and Implementation  
of a Remedial Program for an  
Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York by

ORDER  
ON  
CONSENT  
INDEX #D-7-0002-97-06

Town of Salina,  
Respondent.

Site Code # 734036

The New York State Department of Environmental Conservation (the "Department") and the Town of Salina ("Respondent") hereby agree to the making and entry of this Administrative Order on Consent ("Consent Order").

WHEREAS,

The Department is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites," and is authorized to abate and prevent the pollution of New York State waters caused by discharges pursuant to Article 17 of the ECL and Parts 702 and 703 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301.

2. Respondent, a municipal corporation as that term is defined by Section 2 of the New York State Town Law and a person as that term is defined by Section 27-1301.4 of the New York State Environmental Conservation Law, is the primary owner of the 50 acre landfill known as the Salina Town Landfill, which it operated from approximately 1956 to 1975, when it reportedly ceased accepting waste. The Landfill underwent final closure during the period of 1977 to 1982. The Salina Town Landfill (hereinafter referred to as the "Landfill") is located between the NYS Thruway and Ley Creek in a flood prone wetland about 1.8 miles southwest of Onondaga Lake on Wolf Street in the Town of Salina, Onondaga County, State of New York.

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3. Respondent's operation of the landfill from approximately 1956 to 1975 was pursuant to a Land Lease with the owners of the property at that time, East Plaza, Inc. Subsequent to final landfill closure and after litigation with East Plaza, Respondent purchased the land formerly used as the landfill in March of 1981. Respondent continues to be an owner of the Landfill today.

4. Under a Department Superfund Standby Contract, Ecology and Environment Engineering, P.C. ("E & E") completed a Preliminary Site Assessment ("PSA") of the Landfill in May of 1994. In June and July of 1995, E & E conducted a Supplemental Site Assessment of the Landfill in order to better define the Landfill stratigraphy, to evaluate whether a release of hazardous wastes to groundwater had occurred, and to determine the direction of groundwater flow.

5. The Department documented the disposal of municipal, commercial, industrial and hazardous wastes at the Landfill. Wastes disposed at the Landfill from the General Motors: Fisher Guide facility, located in the Town of Salina, included 640 tons of paint sludge (RCRA hazardous waste classification D002), 22 tons of waste paint thinner and reducer (F003), boiler ash, buffing sludge and polychlorinated biphenyl ("PCB") waste mixed with GM plant refuse. The Carrier Corporation also disposed of approximately 100,000 gallons of drummed industrial waste (e.g. methyl ethyl ketone ["MEK"], toluene, xylene, solder, flux, solvents, thinners and waste paint) at the Landfill from its Thompson Road plant in Syracuse.

6. The Department documented the migration of hazardous wastes and hazardous constituents from the Landfill to Ley Creek. The 1994 PSA investigation found low levels of chlorinated compounds in the surface water and sediment samples taken from Ley Creek at a location adjacent to the Landfill in Ley Creek. PCBs were also detected in sediment samples collected in Ley Creek adjacent to the Landfill, in samples from drainage ditches that receive runoff from the Landfill and in surface soil samples taken from the Landfill.

7. Consistent with the documented hazardous waste disposal history of the Landfill, the Department detected PCBs and volatile organic compounds ("VOCs") in the Landfill's subsurface soil and groundwater during its 1995 Supplemental Site Assessment. In addition, several chlorinated organic compounds as well as ethyl benzene, toluene, and total xylenes were

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detected in the Landfill's subsurface soils. Groundwater at the Landfill was found to be contaminated with several VOCs and semivolatile compounds above Department Class GA groundwater standards.

8. In June 1995, Respondent submitted a Revised Response to a Joint Request For Information that was issued by the United States Environmental Protection Agency ("EPA") and the Department pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq. and the ECL. Respondent's submission provided the EPA and the Department with information regarding the Landfill and the release or threat of release of hazardous substances into Ley Creek, a tributary of Onondaga Lake in Syracuse, N.Y. The Landfill source area as well as all areas where contaminants from the source area have come to be located, including downgradient and downstream of the source area, are hereinafter referred to as the "Site."

9. Based upon the combination of documented PCB and hazardous waste disposal at the Landfill, the detection of PCBs and hazardous wastes in the Landfill's subsurface soils and groundwater consistent with documented disposal, the evidence of PCBs and hazardous wastes in the Landfill's drainage ditch sediments and groundwater migrating toward Ley Creek, and the detection of hazardous substances in the surface water and PCBs and hazardous substances in sediment samples taken from Ley Creek, the Department has found that the PCB and hazardous waste disposed at the Landfill constitutes a significant threat to human health and the environment

10. A. The Landfill is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2., and presents a significant threat to the public health or environment. The Landfill has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 734036. In August 1996, the Department classified the Landfill as a Classification "2" pursuant to ECL 27-1305.4.b; significant threat to the public health or environment - action required. A site map is attached to this Order as Appendix A.

B. Ley Creek is a tributary of Onondaga Lake and ultimately flows into Onondaga Lake. The Onondaga Lake Site was added to the National Priorities List ("NPL") on December 16, 1994. The Onondaga Lake NPL Site is composed of the Lake itself, its tributaries and the upland hazardous waste sites which have contributed or are contributing contamination to the Lake (subsites).

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and of the Department's claim, pursuant to ECL Article 27, Title 13, against Respondent. As required by the State Assistance Contract to be entered into between the Department and Respondent referenced in Paragraph II below, Respondent has agreed to continue to exercise all reasonable efforts to obtain indemnification or a commitment to indemnify from its insurance carriers. Further, Respondent has agreed to identify for the Department other potentially responsible parties and to assist the Department in compelling other potentially responsible persons to bear the cost of the Remedial Program at the Site consistent with the same State Assistance Contract to be entered into between the Department and Respondent.

14. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT

**I. Initial Submittal**

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions at the Site that Respondent has not previously provided to the Department pursuant to the DEC/EPA Joint Request for Information. (See Paragraph 8 above.) Respondent shall immediately submit to the Department any such information that comes into its possession in the future.

**II. State Assistance Application**

A. Respondent submitted to the Department an application for State assistance pursuant to ECL Article 52, Title 3, and a resolution authorizing the execution of a contract for such State assistance, both in a format acceptable to the Department.

B. Respondent submitted a draft Request for Proposals ("RFP") for consulting services as part of the State assistance application and has attained the services of Clough, Harbour & Associates LLP.

C. Within 90 days after the effective date of this Order and every six months thereafter (unless the Department informs Respondent otherwise), Respondent shall provide a written report

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to the Department of the efforts that it has made to obtain indemnification from Respondent's insurers and to assist the Department in compelling other potentially responsible parties to bear the costs associated with the development and implementation of a Remedial Program at the Site.

### **III. RI Work Plan Contents and Submittals**

A. Within 90 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI for the Site ("RI Work Plan")

B. The RI Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI activities together with a schedule for the performance of these activities. The RI shall address remedial concerns both at the landfill source area as well as all areas where contaminants have come to be located including downgradient and downstream of the source area

b. A Sampling and Analysis Plan that shall include

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a Quality Assurance Officer and must describe such individual's qualifications and experience, or include such individual's resume.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI which shall be prepared in accordance with 29 CFR Part 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. Information and assistance to be provided by Respondent in regard to Community Relations pursuant to Paragraph VIII below.

e. A Responsible Party Search Plan to identify the names, addresses, dates of disposal, and proof of liability, of all persons responsible for the disposal of hazardous wastes at the Site

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2. The RI Work Plan shall incorporate all elements of an RI as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the EPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI Work Plan is submitted, and EPA and Department technical and administrative guidance documents.

#### **IV Performance and Reporting of Remedial Investigation**

A. Respondent shall commence the Remedial Investigation in accordance with the schedule contained in the Department-approved RI Work Plan.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI Work Plan.

C. During all on-site field activities of the Remedial Investigation, Respondent shall have a representative on-site who is qualified to supervise the field work done.

D. Within the time frame set forth in the Department-approved RI Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation
2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph III.B.2;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI Work Plan.

#### **V Performance of Baseline Risk Assessment**

A. Within 30 days after receipt of the Department's approval of the RI Report, Respondent shall submit a memorandum identifying the contaminants of concern and the potential exposure pathways, assumptions, and exposure point concentrations to be used in the baseline risk

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assessment (the "Risk Assessment Memorandum"), consistent with EPA OSWER Directive No. 9835.15a, dated July 2, 1991, and EPA's "Risk Assessment Guidance for Superfund, Vol. 1: Human Health Evaluation Manual (Part A)," dated December 1989 and "Risk Assessment Guidance for Superfund Volume II: Environmental Evaluation Manual," dated March 1989, as may be revised.

B. The Department will either approve the Risk Assessment Memorandum or will require modification of it, in accordance with the procedures set forth in Paragraph XII. The final Department-approved Risk Assessment Memorandum shall be incorporated into and made an enforceable part of this Consent Order.

C. Respondent shall perform the Risk Assessment in accordance with the guidance documents identified in Subparagraph III.B.2 and in a manner consistent with CERCLA and the NCP.

D. Within 30 days after receipt of the Department's approval of the Risk Assessment Memorandum, Respondent shall submit a Risk Assessment Report.

E. The Department will either approve the Risk Assessment Report or will require modification of it, in accordance with the procedures set forth in Paragraph XII. The final Department-approved Risk Assessment Report shall be incorporated into and made an enforceable part of this Consent Order.

#### VI. Performance of Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Risk Assessment Report, Respondent shall prepare and submit a FS Screening Memorandum that provides Respondent's methods, rationale, and results of its development and screening of remedial action alternatives for the Site, consistent with EPA's "Guidance for Conducting Remedial Investigation and Feasibility Studies Under CERCLA," dated October 1988 (see Section 4.5).

B. The Department will either approve the FS Screening Memorandum or will require modification of it, in accordance with the procedures set forth in Paragraph XII. The Department-approved FS Screening Memorandum shall be incorporated into and made an enforceable part of this Consent Order.

C. Respondent shall perform and prepare the FS in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph III.B.2.

D. Within 60 days of the Department's approval of the FS Screening Memorandum, Respondent shall submit the FS Report. The FS Report shall evaluate remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards at the Site.

E. After the Department's acceptance of the FS Report, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and on the proposed plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph III.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order pursuant to the ECL.

F. It should be noted that unless the Regional Administrator, EPA Region II, concurs in writing with a State-prepared Record of Decision ("ROD") for the Landfill (which also constitutes a Sub-site of the Onondaga Lake Superfund Site), EPA shall not be deemed to have approved any such State ROD for the purposes of CERCLA. It should also be noted that such a concurrence would not constitute, and should not be construed as, an agreement by EPA pursuant to Sections 106 and 122(d)(1)(A) of CERCLA with any potentially responsible party with respect to any remedial action for this Sub-site or for any other remedial action for the Onondaga Lake Superfund Site.

## VII. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within such period of time after the ROD is signed that the Department shall prescribe in writing, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

**B. The Remedial Design shall include the following:**

**1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to**

**the construction and operation of any structures**

**b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;**

**c the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;**

**d physical security and posting of the Site;**

**e quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and**

**f. monitoring during implementation of the Department-selected remedial alternative for the Site pursuant to this Order.**

**2 "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;**

**3 A time schedule to implement the Remedial Design;**

**4 The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells;**

**5 A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the remedial action in accordance with the Remedial Design, including the number of years during which such activities will be performed (where appropriate) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued**

**6 A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment; and**

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional.

#### **VIII Community Relations**

Respondent shall cooperate and assist the Department in providing information relating to the work required hereunder to the public. As requested by the Department, Respondent shall participate in the preparation of all appropriate information disseminated to the public and in public meetings that may be held or sponsored by the Department to explain activities at or concerning the Site.

#### **IX Remedial Construction**

A. Within such period of time after the Department's approval of the Remedial Design as the Department shall prescribe, Respondent shall commence construction of the Department-approved Remedial Design.

B Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-site a full-time representative who is qualified to supervise the work done

D Within 60 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial construction operation, maintenance, and monitoring plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by a professional engineer or by a person under his or her direct supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O&M Plan, Respondent shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan

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F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design.

G. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives or otherwise fails to protect human health and/or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment

**X Interim Remedial Measures**

A Respondent or the Department may propose one or more IRMs for the Site

2 For any IRM it proposes, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site). Upon receipt of a Department proposal, Respondent shall immediately proceed with the development of an IRM Work Plan for submittal to the Department

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, and a contingency plan. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order, including the Community Relations provision in Paragraph VIII, above. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department

4. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-site a full-time representative who is qualified to supervise the work done.

5 Within the time periods specified in the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the Department-approved IRM requires that construction activities be implemented, the final engineering report also shall include a detailed post-remedial operation, maintenance and monitoring plan ("IRM O&M Plan"); "as-built" drawings (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan

6 After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

#### XI. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XVIII.B in the numbers specified therein copies of written monthly progress reports that

A describe the actions which have been taken toward achieving compliance with this Order during the previous month:

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B include a brief description of all results of sampling and tests, all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, and indicate when the final results will be submitted to the Department, whether conducted pursuant to this Order or conducted independently by Respondent;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G describe all activities undertaken in support of the Community Relations activities required by Paragraph VIII of this Order during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

## **XII. Review of Submittals**

A The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the monthly progress reports and health and safety plans discussed in Subparagraph III.B.1.c and in Subparagraph VIII.B.7. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days (or as otherwise specified in a table of the Department-approved RI/FS Work Plan and/or Remedial Design) after receiving written notice that Respondent's submittal has been disapproved, Respondent shall deliver a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

### **XIII Violations**

A Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECI

2 Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, payable to "New York State Department of Environmental Conservation" and shall be delivered



personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under Subparagraph XII.A.2 pursuant to the following schedule

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 5th day	\$ 5,000
16th through 30th day	\$ 10,000
31st day and thereafter	\$ 5,000

B Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Subparagraph

#### XIV. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of EPA, the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. During Remedial Construction, Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

#### XV. Department Reservation of Rights

A Nothing contained in this Order shall be construed as barring, diminishing

adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

C. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Respondent's civil or administrative rights or remedies to contest, appeal, or otherwise controvert the acts or decisions of the Department in the administration of this Consent Order in any proceedings, procedures or other matters related thereto or emanating therefrom, except as otherwise provided in paragraph 14 above.

#### **XVI. Indemnification**

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

#### **XVII. Public Notice**

A. Within 60 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County wherein the Landfill is located to give all parties who may acquire any interest in the Landfill notice of this Order

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Landfill, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

#### **XVIII. Communications**

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to

Kathleen McCue, P.E  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010

with copies to:

- Henriette Hamel, NYS Department of Health  
Office of Public Health  
217 South Salina Street  
Syracuse, N.Y. 13202
- 2 Ken Lynch  
Acting Regional Director, NYSDEC Region 7  
615 Erie Boulevard West  
Syracuse, NY 13204-2400
- 3 Robert K. Davies, Esq  
50 Wolf Road Room 410A  
Albany, NY 12233-5550

B Copies of work plans and reports shall be submitted as follows:

- 1. Three copies (one unbound hardcopy with associated figures and one on 3½" computer disk(s) in Word Perfect version 6.0 or compatible word processing format and any associated figures in Auto Cad or compatible format) to Kathleen McCue, Division of Environmental Remediation.
- 2 Two copies to Henriette Hamel, NYS Department of Health
- 3 One copy to Charles Branagh, NYSDEC Region 7
- 4 One copy to  
Alison A. Hess  
Onondaga Lake Project Manager  
U.S. EPA Region II  
290 Broad way  
New York, NY 10007-1866

**C** Within 30 days after the Department's approval of the RI/FS, Respondent shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of the Department-approved RI/FS. Within 30 days after its approval of the drawings and submittals described in Subparagraph VII.D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals other than the Department-approved RI/FS. Such submissions shall be made to:

1 Michael J. O'Toole, Jr.  
Director, Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road, Room 260  
Albany, New York 12233-7010

2 Alison A. Hess, U.S. EPA

**D** Communication to be made from the Department to Respondent shall be sent to  
Colleen Gunnip, Town Clerk  
Town of Salina  
201 School Road  
Liverpool, New York 13088

with copies to

Mary Ann Schadt, Town Supervisor  
Town of Salina  
201 School Road  
Liverpool, New York 13088

2 Frank Mento  
Clough Harbour & Associates  
1300 State Tower Building  
109 South Warren Street  
Syracuse, New York 13202

3 Robert D. Ventre, Esq  
Coulter, Fraser, Bolton, Bird & Ventre  
220 South Warren Street  
Syracuse, New York 13202

E The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other

**XIX Miscellaneous**

A All activities and submittals required by this Order shall address contamination resulting from the disposal of hazardous wastes at the Site and shall include both the source of contamination and areas downgradient of the source where wastes have come to be located

B. Respondent has procured an acceptable consultant to perform Respondent's obligations required by this Order, Clough, Harbour & Associates LLP. Hereafter, Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 15 days after such procurement by Respondent. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order

**E** Respondent shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. For purposes of this Paragraph, the Department has full discretion in determining what actions satisfy "best efforts". If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Should Respondent's or the Department's best efforts fail to obtain the necessary access, Respondent's obligations under the Order that are impeded as a result shall be tolled until access is obtained. Respondent shall permit the Department full access to all records relating to matters addressed by this Order.

**F** Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's

**G** work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order

**H.** All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer

professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I All references to "days" in this Order are to calendar days unless otherwise specified

J. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Robert K. Davies, Esq. and to Kathleen McCue.

L The effective date of this Order is the date the Commissioner or his designee signs it.

DATED: 11/11

, New York  
1997

JOHN P. CAHILL  
Commissioner  
New York State Department  
of Environmental Conservation

By:

  
Michael J. O'Toole, Jr.  
Division Director





CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By Mary Ann Schadt

Name: Mary Ann Schadt

Title: Supervisor  
November 6, 1997

Dated: November 6, 1997

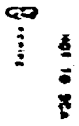
STATE OF NEW YORK )  
 ) s.s.  
COUNTY OF )

On this 6th day of November, 1997, before me personally came MARY ANN SCHADT, to me known, who being duly sworn, did depose and say that he resides in the town of SALINA; that he is the Supervisor of the Town of SALINA municipality described in and which executed the foregoing instrument; that he knew the seal of said municipality that the seal affixed to said instrument was such municipal seal; that it was so affixed by the order of the (Town or other applicable body) Board of said municipality and that he signed his name thereto by like order.

Michael J. Hrab  
Notary Public  
MICHAEL J. HRAB  
Notary Public, State of New York  
No. 5003666  
Qualified in Onondaga County  
Commission Expires October 26, 1998

## APPENDIX A

### SITE MAP



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eqbarem.ord